

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Nevada Wireless)
)
Petition for Reconsideration, Motion for)
Set Aside, and Motion for Stay of)
Public Notice DA 97-1627)
and)
Petition for Reconsideration, Motion for)
Set Aside, and Motion for Stay of)
Public Notice DA 97-1672)
)
800 MHz Specialized Mobile Radio Auction)
Upper 200 Channels)

ORDER

Adopted: July 21, 1999

Released: July 22, 1999

By the Deputy Chief, Wireless Telecommunications Bureau:

1. We have before us two Petitions for Reconsideration, two Motions for Set Aside, and two Motions for Stay filed by Nevada Wireless with respect to two Public Notices released by the Wireless Telecommunications Bureau ("Bureau") on July 30, 1997¹ and August 6, 1997,² respectively. (We refer collectively to "Petitions for Reconsideration," "Motions for Set Aside," and "Motions for Stay.") For the reasons set forth below, we dismiss Nevada Wireless's Petitions for Reconsideration, Motions for Set Aside, and Motions for Stay as moot.

2. On July 30, 1997, the Bureau released a Public Notice announcing the auction date and filing deadlines for the auction of the upper 200 channels of the 800 MHz Specialized Mobile Radio (SMR) service (Auction No. 16), which was scheduled to begin October 28, 1997. Subsequently, on August 6, 1997, the Bureau released a Public Notice announcing auction procedures for the same auction.³ On August 6, 1997, Nevada Wireless submitted a Petition for Reconsideration, a Motion for Set Aside, and a Motion for Stay of the *July 30th Public Notice*. On August 13, 1997, Nevada Wireless submitted a Petition for

¹ See "FCC Announces Upcoming Spectrum Auction Schedule," *Public Notice*, DA 97-1627 (rel. July 30, 1997) (*July 30th Public Notice*).

² Nevada Wireless Petition for Reconsideration of Public Notice DA 97-1627, filed August 6, 1997; Nevada Wireless Motion for Set Aside of Public Notice DA 97-1627, filed August 6, 1997.

³ See "Auction of 800 MHz Specialized Mobile Radio Service Licenses," *Public Notice*, DA 97-1672 (rel. August 6, 1997) (*August 6th Public Notice*).

Reconsideration, a Motion for Set Aside, and an Emergency Motion for Stay of the *August 6th Public Notice*.⁴

3. Nevada Wireless challenges the two Public Notices on various grounds.⁵ For example, Nevada Wireless claims that both Public Notices are defective for including specific information that Nevada Wireless considers violative of the Commission's rules and for failure to include other information that it believes the Commission's rules require. Ultimately, Nevada Wireless contends that its participation in the 800 MHz SMR auction in the face of its numerous objections to the *July 30th Public Notice* and the *August 6th Public Notice* would deprive it of its right to due process under the Fifth Amendment.

4. Despite its pre-auction objections, Nevada Wireless was a high bidder on 16 licenses in the 800 MHz SMR auction.⁶ Therefore Nevada Wireless's Petitions for Reconsideration, Motions to Set Aside, and Motions for Stay are moot and we find it unnecessary to consider Nevada Wireless's arguments. Moreover, we note that Nevada Wireless may not request a set aside, pursuant to Section 1.113 of the Commission's rules. Set aside actions must be made by the Commission, or its delegated authority, on its own motion.⁷

⁴ Nevada Wireless Petition for Reconsideration of Public Notice DA 97-1627, filed August 13, 1997; Nevada Wireless Motion for Set Aside of Public Notice DA 97-1627, filed August 13, 1997.

⁵ We find many of the arguments Nevada Wireless, by its counsel, proffers so patently inimical to a plain reading of the law that it casts into doubt the petitioner's good faith. The expense of time and resources to address what appear to be frivolous arguments is a detriment to the public interest. Nevada Wireless seemed to be invoking Commission procedures in order to delay the auction and, ultimately, the provision of SMR service to the public. We therefore warn Nevada Wireless, and any others, that we are prepared to impose abuse of process remedies should meritless petitions be filed in the future. See "Commission Taking Tough Measures Against Frivolous Pleadings," FCC 96-42, 11 FCC Rcd 3030 (1996). See, e.g., Western Maine Cellular, Inc., *Memorandum Opinion and Order*, DA 92-1706, 7 FCC Rcd 8648, 8650 n.6 (1992); GTE Mobilnet of Terre Haute Limited Partnership, *Memorandum Opinion and Order*, DA 92-1484, 7 FCC Rcd 7127, 7129 n.6 (1992).

⁶ The 800 MHz SMR auction began on October 28, 1997, and concluded on December 8, 1997. See "FCC Announces the Corrected Conditional Grant of 800 MHz SMR Licenses," *Public Notice*, DA 98-42 (rel. March 10, 1998); "800 MHz SMR Auction Closes: Winning Bidders in the Auction of 525 Specialized Mobile Radio Licenses," *Public Notice*, 12 FCC Rcd 20417 (1997).

⁷ See, e.g., In the Matter of the Application of Figgie Communications, Inc. For Authority to Construct and Operate a Multichannel Multipoint Distribution Service Station on the E-Group Channels at Quincy, Illinois, *Order on Reconsideration*, 7 FCC Rcd 7264, n.1 (rel. October 22, 1992).

5. IT IS ORDERED, pursuant to Sections 0.131 and 0.331 of the Commission's rules, 47 C.F.R. §§ 0.131 and 0.331, that Nevada Wireless's Petitions for Reconsideration, Motions for Set Aside, and Motions for Stay of the *July 30th Public Notice* and *August 6th Public Notice* ARE DISMISSED as MOOT.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Vaughan
Deputy Chief, Wireless Telecommunications Bureau